

Importance of victim impact assessment

What is the issue?

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Mainstreaming the victims of crimes is necessary for a fair trial and hence it is time to make victim impact statements mandatory.

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What are the concerns with the trial process in India?

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- The term victim came to be defined in criminal law only in 2009 in India.

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- The victim of a crime is heard only as a witness and not as a victim during the trial of a case.

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- The trial process is organised in such a manner that the personal appearance of the victim at all the crucial stages is restricted.

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- The victim is not present when charges are framed against the accused, when the accused is discharged, when bail is granted, when parole is considered, and when punishment or compensation is decided.

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- On the other hand, the accused is always required to be present during all these stages.

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- As the victim is represented by a prosecutor, her concerns as well as the impact of her victimisation remain unexpressed.

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- Also, the police, prosecutors and courts do not have any substantive legal obligation towards crime victims.

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- As a result, 'Secondary victimisation' takes place, wherein the agencies of the criminal justice system treat victims of crime unfavourably, or marginalise them during the trial.

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How does a quantum of sentence is decided?

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 - After a criminal defendant is found guilty or pleads guilty and is convicted, a judge decides on the appropriate punishment.
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 - The decision about punishment is a complex one.
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 - The judge needs to consider the adequacy of the sentence as Indian laws do not follow a fixed punishment model.
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 - Instead, there is a scale of punishment and the court decides the quantum of punishment according to this scale.
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 - The Criminal Procedure Code, in Section 235(2), places a mandatory duty on the court to hear the accused on the question of sentence.
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 - The idea is to collect personal information and consider it while specifying the quantum of punishment.
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 - While this practice is laudable, it causes a huge disadvantage to the victim of the crime as the trial court is under no legal obligation to hear the victim.
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 - Hence, a victim impact statement will help the court take a balanced view at this stage.

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How does a victim impact statement address this?

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 - A victim impact statement has the potential to alter the course of things for victims of crime in India.
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 - Victim impact statements are written or oral statements by crime victims, about how the crime has impacted them.
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 - Often, the family members and friends of victims also make written and verbal statements.

- Generally, a victim is assisted to submit a detailed form, which is standardised through a prosecutor.
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- Victim impact statements could also provide information about the damage caused to victims by the crime, which is information that would otherwise not be available to the courts.
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- Details of the financial impact of the crime such as lost wages, medical or counselling expenses, transportation costs and damage to property, including a request for compensation or restitution can also be included.
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- Thus, hearing the victim in person or through a victim impact statement at the stage of sentencing could be crucial.
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- This will help the court decide the quantum of punishment as well as assess the amount of compensation to be ordered.
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What should be done?

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- The UN 1985 Declaration of Basis Principles of Justice for Victims of Crime and Abuse of Power effectuated a movement for victim empowerment.
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- It has enabled victims to have rights and reasonable protections, and assistance and participation in the system.
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- It also made a powerful plea to provide a voice to the victims of crime during the trial stage.
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- The Supreme Court in the **Mallikarjun Kodagil v. State of Karnataka** case also stressed the need to have a victim impact statement so that an appropriate punishment is awarded to the convict.
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- The U.S., Canada, Australia, and many countries in Europe have already made victim impact statements mandatory.
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- Hence it is time for India to implement the same.
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Source: The Hindu

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